

When the legal incidence of a tax is on the consumer, it is not considered to be part of the gross receipts from the sale of tangible personal property for the purpose of calculating Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.445(a). (This is a GIL).

March 9, 2001

Dear Xxxxx:

This letter is in response to your letter of December 18, 2000 that we received on January 8, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am writing to request a legal letter ruling regarding specific tax liability related to motor fuel sales. I have spoken to someone in the support department and they were unable to answer these specific questions. They directed me to write this letter with my specific questions and an example. I have several questions regarding proper reporting methods for taxes that have already paid, in addition to the pre-paid sales tax that is reported on ST-1 Form, Line 17. Also, are motor fuel sales to be considered as a general merchandise? I will detail below a typical invoice from my fuel supplier along with taxes paid in an effort to give a clearer picture of where my understanding is derived from.

Example:

I purchase 100 gallons of fuel

Included in the cost:

Cost of fuel	= \$405.00
Fed Ex Tax on Gasoline: 100gal x \$.1840	= \$ 18.40
Illinois Motor Fuel Tax: 100gal x \$.19	= \$ 19.00
Illinois Prepay Sales tax: 100gal x \$.04	= \$ 4.00
Illinois U.S.T. Fee : 100 gal x \$.003	= \$.30
IL Environmental impact: 100gal x \$.008	= \$.80
TOTAL PAID TO SUPPLIER = \$447.50	

Now I sell that fuel for \$480.00. The assumptions that I have made when filling out the ST-1 Sales and Use Tax Return Form are that the 'IL motor fuel tax' (\$19.00) and the 'Prepay sales tax' (\$4.00) are accounted for on the form. However there is no place to account for the additional taxes (\$19.50) that were paid. Also I have assumed that the

sales of motor fuels, less taxes, (\$437.50) are not subjected to the 6.5% Sales Tax since the Illinois tax was already paid on a per gallon basis. Are these assumptions correct?

In conclusion, I am asking for assistance in properly reporting my taxes. I have detailed my specific questions below

- 1) Are sales from motor fuel to be reported as general merchandise sales, and then subject to 6.5% tax, even though multiple Illinois taxes have already been paid on a per gallon basis.
- 2) How are additional prepaid taxes (Fed Ex tax, IL U.S.T fee, IL envirn. impact fee) accounted for on the ST-1 Form?

I appreciate your time and look forward to your reply.

For the reasons explained below, you should collect and remit sales tax upon your sales of motor fuel. When calculating the sales tax base you may deduct the Illinois Motor Fuel Tax. The other taxes you mention may not be deducted from the sales tax base. The pre-paid sales tax is allowed as a credit against sales tax due in an amount equal to the tax paid by the retailer to the distributor, supplier, or other reseller.

Section 2 of the Illinois Retailers' Occupation Tax Act, 35 ILCS 120/2, imposes a tax upon persons engaged in the business of selling at retail tangible personal property, including motor fuel. Retailers incur Retailers' Occupation Tax (sales tax) liability upon their gross receipts from the sale of tangible personal property.

Section 1 of the Retailers' Occupation Tax Act (35 ILCS 120/1) defines "gross receipts" from sales of tangible personal property at retail to mean the total selling price or the amount of such sales. The "selling price" or "amount of sale" means the consideration for a sale valued in money whether received in money or otherwise, and shall be determined without any deduction on account of the cost of the property sold or any other expense whatsoever. See 86 Ill. Adm. Code 130.410. Accordingly, other taxes that are part of the selling price are subject to Retailers' Occupation Tax.

When deciding the question about whether a particular tax is included in the selling price for computing Retailers' Occupation Tax, one must look at the statute or tax act to see upon whom the taxing government (whether federal, state or local) has placed the legal incidence of the tax. Please see 86 Ill. Adm. Code 130.435 State and Local Taxes Other Than Retailers' Occupation Tax, enclosed.

When the legal incidence of a tax is on the consumer, it is not considered to be part of the "selling price" of the tangible personal property for the purpose of calculating Retailers' Occupation Tax. On the other hand, when the legal incidence of a tax is not imposed on the consumer but is imposed at a higher level in the distribution chain, e.g. upon the manufacturer, importer, or distributor, then the amounts of the retail selling price of the tangible personal property that represents these taxes is includable in the base and cannot be deducted in computing Retailers' Occupation Tax.

Please note the Illinois Motor Fuel Tax collected by sellers of motor fuel may be deducted by such sellers for purpose of computing the Retailers' Occupation Tax because the legal incidence of

the Motor Fuel Tax is on the consumer and is not considered to be part of the selling price of the fuel. See 86 Ill. Adm. Code 130.435(a)(1).

Provisions of Section 2a of the Motor Fuel Tax Act (35 ILCS 505/2a) impose an Underground Storage Tank Tax, on and after January 1, 1990 and before January 1, 2013, at the rate of three-tenths of a cent per gallon upon the privilege of being a receiver in this State of fuel. Beginning January 1, 1996, provisions of P.A. 89-0457 caused receivers of fuel to become subject to an Environmental Impact Fee. The Underground Storage Tank Tax and the Environmental Impact Fee are includable in gross receipts subject to Retailers' Occupation Tax because those taxes are imposed at the manufacturer or importer level (see 35 ILCS 505/1.20 for the definition of receiver) and not upon the consumer. See Section 130.435(c).

As is the case with State taxes, federal taxes are not deductible from the selling price or gross receipts for purposes of calculating sales tax when the incidence of the tax falls upon the manufacturers, wholesalers, or importers. Please refer to 86 Ill. Adm. Code 130.445, enclosed. Accordingly, the federal excise taxes on gasoline and diesel are not deductible because their legal incidence falls upon the manufacturers, wholesalers, or importers rather than upon the customers or end users. As such, they are costs of doing business that are not deductible from the base when calculating sales tax.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.